

General Information Letter: No subtraction modification is allowed for excess charitable contribution deductions which, for federal income tax purposes, are carried over as net operating losses and so must be added back in computing base income.

May 20, 2002

Dear:

This is in response to your letter dated April 26, 2002. The nature of your request and the information provided requires that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c). Department of Revenue Regulations may be accessed from the Department's web site at www.revenue.state.il.us.

Your letter states as follows:

Thank you for taking the time on Monday, April 15 to discuss with me notices that COMPANY has received related to its reporting of charitable contributions on its 2000 Illinois Form IL-1120.

As we discussed, COMPANY is the only member of its consolidated federal group required to file an Illinois income tax return. Due to losses in years prior to the 2000 reporting year in question, COMPANY, both as a single entity and a consolidated group, had unused charitable contributions carried forward to 2000.

For the 2000 filing year, COMPANY's tax return preparation software limited it to reporting only current year contributions on each of its pro forma 1120s, including that which was filed with its 2000 Illinois Form IL-1120. The charitable contribution carryforward that is included on the consolidated Form 1120 Line 19 was tracked via an "Eliminations" company that is typically used to eliminate intercompany transactions between members of the consolidated group. By definition, the eliminations company is included only in the consolidated federal return and not in any of the pro forma returns. To accurately state the pro forma returns as if they had actually been filed as separate federal income tax returns, an adjustment must be made to the pro forma returns, as prepared, to attribute the share of the charitable contributions carryforward from the eliminations company to each respective entity.

On its 2000 Form IL-1120, COMPANY showed this charitable contributions adjustment in Part I on Line 5f "Other subtractions." Please note that this adjustment was made to adjust the pro forma 1120 to what it would have been if it actually had been filed as a separate federal income tax return and was not made to take an additional deduction for Illinois purposes.

Enclosed, please find the following:

1. Copies of the affected pages of Form IL-1120;
2. Page one of the consolidated Form 1120 filed with the Internal Revenue Service.
 - a. A schedule that was filed with the consolidated Federal Form 1120 that, on an entity-by-entity basis, supports the information presented on page one of Form 1120.

- b. A contribution carryover schedule that was filed with the consolidated Federal Form 1120 that describes the origins and usage of the consolidated carryover;
3. A schedule that lists, by contributing entity and by year, contributions made and their usage with the result being the contribution carried forward to 2000.
4. The most recent BTR-85 notice that COMPANY has received regarding this issue. Following the recommendation of Mary Austin of the Illinois Department of Revenue, COMPANY is working to resolve the additional items listed on this notice with another section of the Illinois Department of Revenue.

COMPANY claimed the entire consolidated charitable contribution carryforward on its 2000 Form IL-1120 as filed. In order to be conservative, I have prepared the schedule listed in item 3 above assuming that the utilization of contributions in years prior to 2000 came exclusively from the parent company, COMPANY, and that all contributions made by other entities are still included in the carryforward available in 2000.

This effectively claims a smaller additional deduction that was claimed as filed in Part I on Line 5f of 2000 IL 1120 (\$1,494,622 rather than the \$1,526,967 claimed on the return). If the Illinois Department of Revenue is in agreement with this adjustment, COMPANY will remit the difference in tax attributable to the charitable contribution carryforward difference.

RULING

In the case of a corporation, the computation of Illinois net income begins with federal taxable income. (35 ILCS 5/203(b)(1)) The corporation's base income is next determined by adjusting federal taxable income by certain statutorily prescribed addition and subtraction modifications. (35 ILCS 5/203(b)(2)) Finally, base income is allocated to Illinois (35 ILCS 5/301(c)), and Illinois net income equals the amount so allocated less a standard exemption the deduction for Illinois net operating losses. (35 ILCS 5/202, 5/204, 5/207)

Generally, a corporation's federal taxable income for Illinois income tax purposes is its taxable income properly reportable for federal income tax purposes (35 ILCS 5/203(e)(1)). However, with respect to a corporation that is a member of a federal consolidated group, taxable income is defined as follows:

In the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, taxable income determined as if such corporation had filed a separate return for federal income tax purposes for the taxable year *and each preceding taxable year for which it was a member of an affiliated group*. For purposes of this subparagraph, the taxpayer's separate taxable income shall be determined as if the election provided by Section 243(b)(2) of the Internal Revenue Code had been in effect for all such years. (35 ILCS 5/203(e)(2)(E)) (Emphasis added)

Section 203(h) of the Illinois Income Tax Act ("IITA" ; 35 ILCS 5/203(h)) states that except as otherwise expressly provided, no modifications are made to federal taxable income in the computation of base income. The IITA does not provide a subtraction modification for charitable

contributions. Consequently, charitable contributions reduce Illinois base income only to the extent taken into account in the computation of federal taxable income.

Applying the foregoing to the facts in this case, COMPANY may not claim any amount of its charitable contributions carryforward as a subtraction modification on Part I, Line 5f of its Form IL-1120. Instead, COMPANY's charitable contributions carryforward should be taken into account in computing its federal taxable income for Illinois income tax purposes. As indicated above, under IITA section 203(e)(2)(E), COMPANY must compute its federal taxable income as if it had filed a separate return for its 2000 taxable year and each prior taxable year for which it was a member of an affiliated group. Accordingly, COMPANY's charitable contributions carryforward must be computed as if it had filed separate returns for the years such contributions were made.

In addition, please note that this ruling assumes that COMPANY is not a member of a unitary business group. The term "unitary business group" is defined at IITA section 1501(a)(27), and is not limited to taxpayers required to file an Illinois income tax return. The computation of Illinois net income in the case of a member of a unitary business group is computed by applying the combined apportionment method. (35 ILCS 5/304(e); Regulations §100.3320 and §100.5270) (enclosed).

As stated above, this is a GIL. A GIL does not constitute a statement of Department policy, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items one through eight of 86 Ill. Adm. Code 1200.110(b). If you have additional questions regarding this GIL, you may contact the Legal Services Division at (217) 782-7055.

Sincerely,

Brian L. Stocker
Staff Attorney (Income Tax)